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Robert L. Morgan, P.E.
Utah State Engineer
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Salt Lake City, Utah 84116-3156

Re: Proposed Distribution of Water Within Utah
Lake Drainage Basin (10/15/91 Revised Draft)

Dear Mr. Morgan:

Provo River Water Users' Association (the "PRWUA") respectfully submits the following comments relative to the 10/15/91 Revised Draft of the Proposed Distribution of Water Within the Utah Lake Drainage Basin (the "Distribution Proposal").

GENERAL COMMENTS

In PRWUA's comments to the 5/14/91 Draft, it was noted that the Distribution Proposal falls short of achieving the objectives stated therein. PRWUA respectfully submits that the October 15, 1991 Revised Draft is likewise deficient. The responses of the State Engineer (Document No. 14) to the Comments of PRWUA to the 5/14/91 Draft Distribution Proposal do not fully answer the concerns of PRWUA stated therein, nor does the 10/15/91 Revised Draft of the Distribution Proposal do so.

In general, the Distribution Proposal is predicated on the erroneous assumption that the Utah Lake Water Users are entitled to 870,000 acre-feet ("AF") of storage in Utah Lake on November 1 of each year before any upstream "system storage" can be converted to "priority storage". PRWUA respectfully suggests that such entitlement should not exceed a one year's supply, plus inactive storage. Likewise, the Distribution Proposal is predicated on an arbitrary 125,000 AF of holdover entitlement by the owners of the primary Utah Lake storage rights. There is nothing

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in any of the Decrees adjudicating the rights of those Utah Lake Water Users to holdover storage in Utah Lake and it is error to arbitrarily include such holdover storage in the Distribution Proposal.

SPECIFIC COMMENTS

1.0 Introduction

PRWUA respectfully suggests that to exclude the waters imported into the Utah Lake drainage from the Distribution Plan (line 35, p.2) is a mistake and could well render the whole plan unworkable. For example, Water Right No. 55-262 evidences the right to store in Deer Creek Reservoir from the Provo River up to 17,410 AF of water accumulating in Utah Lake from return flows of Provo River Project water diverted from the Weber River and North Fork of the Duchesne River during the previous year. Water Right No. 35-8756 evidences the right to store in Utah Lake up to 37,200 AF of Provo River Project water diverted from the Weber River and to store an equivalent quantity of water in Deer Creek Reservoir from the Provo River during the following year, provided that the combined total under both rights shall not exceed 30,600 AF. Likewise, Water Right No. E 398 (55-AREA) authorizes the storage in Jordanelle Reservoir up to 300,000 AF of water from the Provo River in exchange for a like quantity of water released from the enlarged Strawberry Reservoir for replacement storage in Utah Lake. Accordingly, it is self-evident that in any given year Utah Lake will contain imported waters which must be included in any plan for the distribution of the waters of Utah Lake and its tributaries. To say that such waters will be administered in accordance with their individual rights simply begs the question.

3.0 Water Rights in Utah Lake

3.1 Background (p.6)

It is noted on lines 15 and 18 on page 6 that the Booth Decree is referenced to the year 1908 and should be 1909 (6/05/09). The reference on lines 24-26 on page 6 that all subsequent rights established under applications to appropriate water and confirmed by the Booth Decree as secondary storage

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rights appears to be in error, since the only subsequent application involved therein was the 40 cfs "Mosida filing" of James A. Gardner. None of the secondary storage rights tabulated on page 8 were involved in the 1909 Booth Decree.

3.2.4 Table 1 (p. 8)

PRWUA respectfully suggests that it is error to tabulate Right Nos. 59-3496 (North Jordan Irrigation Company), 57-5272 (SLCWCD), and 59-3517 (Kennecott Utah Copper Corporation) as primary storage rights in Utah Lake. The Distribution Proposal should deduct the historical accretions to the Jordan River used to satisfy the foregoing rights from the quantities of water tabulated in Table 1.

The attached summary marked Exhibit "A" taken from the reports of the Utah Lake and Jordan River Water Commissioner, demonstrates that during the 53 year period from 1936 to 1988, only 11% of the water delivered to the North Jordan Irrigation Company was supplied by water pumped from Utah Lake. Furthermore, during the recent 20-year period only 2%, and during the recent 10-year period only 0.4%, were supplied by water pumped from Utah Lake. Thus, it is error to require that the combined total of 29,599 AF under the foregoing rights be made available in Utah Lake before upstream "system storage" can be converted to "priority storage".

In addition to the foregoing, that portion of the 10,499 AF allocated to SLCWCD under Right Nos. 57-5272 and 57-5722, which otherwise would have been satisfied by accretions to the Jordan River was subordinated to Right Nos. 55-295 and 59-13 by letter agreement dated August 17, 1989, as noted in PRWUA's Comments dated July 1, 1991. It should be noted that Right Nos. 59-3496, 57-5272 and 59-3517, collectively total 29,599 AF, which exceeds the 1909 Booth Decree award of 24,000 AF by 5,599 AF. Likewise, it is noted that in the "Proposed Determination" (Code No. 59, Book No. 4, p. 227) Right No. 59-3517 is limited to 2,560 AF from April 1 to October 31 and 950 AF from November 1 to March 31, for a total of 3,510 AF. However, Right No. 59-3517 is quantified at 13,750 AF in Table 1, or 10,240 AF in excess of the "Proposed Determination". It also should be noted that Right No. 59-3500 (South Jordan Canal Company) and 59-5270 (SLCWCD) total 29,635 AF, which exceeds the 1909 Booth Decree award of 27,000 AF by 2,635 AF.

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In view of the above, the total quantity of primary storage rights in Utah Lake in Table 1, should be reduced by a net quantity of 12,875 AF (10,240 + 2,635) to a total of 176,432 AF. Likewise, the combined primary and storage rights in Table 1 should be reduced to a total of 289,171 AF to avoid enlargement of those rights.

Right Nos. 55-7060 and 55-7061, covering 3400 AF of storage in Deer Creek Reservoir are assigned a priority of 1880 under the Distribution Proposal. (Enclosure 4 - Storage Rights, p.2) While PRWUA is of the view that the priority of the foregoing rights are earlier and could even predate the primary storage rights in Utah Lake, it is clear that the assigned 1880 priorities predate the secondary storage rights in Utah Lake. Furthermore, the 3400 AF comprised the prior consumptive use on the Deer Creek Reservoir lands and never reached Utah Lake. Accordingly, the foregoing 3,400 AF should be deducted from the upstream "system storage" in Deer Creek Reservoir as the basis for converting to priority storage. Similarly, Right No. 59-7624 (CUWCD) for 25,000 AF of primary storage and Right Nos. 59-14, -15, and 20 (Central Utah Water Conservancy District) for 57,073 AF of secondary storage should be deducted from upstream "system storage" in Deer Creek Reservoir under the Deer Creek-Strawberry Exchange as the basis for converting upstream "system storage" in Deer Creek Reservoir to priority storage.

3.2.7 - Table 2 (p.9)

The percentages in Table 2 require modification for the adjustments to Right Nos. 59-3496 (North Jordan Irrigation Company) and 59-5272 (SLCWCD) for Jordan River accretions and 59-3517 (Kennecott Utah Copper Corporation) for both the Jordan River accretions and the 3,510 AF limitation in the Proposed Determination as noted above.

4.0 Relationship of Storage Rights in Utah Lake and Upstream Reservoirs

4.1 Background (p.9)

PRWUA respectfully suggests that a distinction must be made between the Utah Lake primary storage rights and the Utah Lake secondary storage rights throughout the whole distribution plan.

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Thus, the statement on page 9, lines 38, 39, could well apply to the Utah Lake primary storage rights. However, such statement does not necessarily apply to Utah Lake secondary storage rights. As noted above, the priorities of Water Right Nos. 55-7060 and 55-7061, covering the storage of 3,400 AF in Deer Creek Reservoir, are earlier than any of the Utah Lake secondary storage rights. The same applies to all upstream storage rights listed on pages 1, 2 and 3 on Enclosure 4. The foregoing points up the fallacy of combining Utah Lake primary storage rights and secondary storage rights in determining the 616,700 AF of "system storage".

4.2.9 - Table 3 (p.12)

If the "system storage" concept has merit, it would make more sense that separate "system storage" tables be developed for Utah Lake primary storage rights and for Utah Lake secondary storage rights. Table 3 appears to include the quantities of water necessary to satisfy both Utah Lake primary storage rights and Utah Lake secondary storage rights. Upstream storage under rights prior to the Utah Lake secondary storage rights are not subject to call to satisfy the Utah Lake secondary storage rights. Accordingly, the quantities of "system storage" water set forth in the first table would be based on the quantities necessary to satisfy only the Utah Lake primary storage rights. The quantities of "system storage" water set forth in the second table would be based on the quantities necessary to satisfy the Utah Lake secondary storage rights. Upstream storage under rights junior to the Utah Lake primary storage rights, but prior to the Utah Lake secondary storage rights would be included as "system storage" under the first table, but not the second table. Upstream storage under rights junior to both the Utah Lake primary storage rights and secondary storage rights would be included as system storage under both tables.

6.0 Other Distribution Issues

6.1 Background (p.13)

PRWUA takes issue with the conclusion on lines 25, 26 on page 13, that direct flow rights on the Provo River are senior to the storage rights as relating to Right Nos. 55-7060 and

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55-7061, covering the storage of 3,400 AF in Deer Creek Reservoir during the irrigation season. Paragraph 121 of the Provo River Decree specifically provides that with minor exceptions the First to Sixteenth Class rights in the Wasatch Division have priority over the rights in the Provo Division.

It should be noted that the inadequacy referred to in lines 27 and 28 on page 13 have been remedied by the installation of a new monitoring system at Deer Creek Dam which supersedes the old manometer.

PRWUA concurs with the statement on lines 40, 41 on page 13, that the administration of exchange applications is another important distribution issue. In fact, PRWUA respectfully suggests that the Distribution Proposal is fatally defective for its failure to incorporate the exchanges into such proposal. The Provo River Project water rights are predicated on applications to appropriate water, in part, by exchange. For example, PRWUA is entitled to divert 37,200 AF of water from the Weber River for storage in Utah Lake under Water Right No. 35-8756 and to recover a like amount less evaporation losses, but not to exceed 30,000 AF during the following year from the natural flow of the Provo River for storage in Deer Creek Reservoir. PRWUA is also entitled to recover from the natural flow waters of the Provo River a maximum of 17,410 AF for storage in Deer Creek Reservoir in exchange for return flows from the waters diverted from the Weber River and Duchesne River, which accumulated in Utah Lake during the prior year under Water Right No. 55-262, provided that the combined total under the above two water rights shall not exceed 30,000 AF.

In addition to the above, 2,225 shares of stock of PRWUA (equivalent to 2,225 AF) are owned by five stockholders whose irrigated lands are situated above Deer Creek Reservoir in the areas of Kamas and Francis and above Woodland. The Provo River Project waters are delivered from the Provo Reservoir Water Users' Company share of the "head of the river storage" in exchange for their respective shares of Deer Creek Reservoir storage water, which has occurred each year since Deer Creek Reservoir became operational in the 1940's. In sum, to exclude those exchanges from the Distribution Proposal is a mistake and could well render the whole plan unworkable.

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6.2.5 (p.14)

PRWUA strongly objects to the concept that exchanges will be administered on a concurrent release and diversion basis and, under no circumstances, will deficits or credits be allowed to be carried over from year to year. Such concept is directly contrary to Water Right Nos. 55-262 and 35-8756 as noted above. Likewise, such concept would abrogate the underlying premise of the Deer Creek-Strawberry Exchange if replacements into Utah Lake were concurrently required for storage of Provo River water in Deer Creek Reservoir.

7.0 Adjudication Issues

7.1 Background (p.14)

PRWUA concurs with the concept that priority dates be established for all water rights within the basin. However, caution must be exercised in assuring that such priority dates will be consistent with the terms of the existing Decrees. With respect to the Provo River, for example, such priority dates must be consistent with paragraph 121 of the Provo River Decree which specifically provides that with minor exceptions the First to Sixteenth Class rights in the Wasatch Division have priority over the rights in the Provo Division. In any event, the Distribution Proposal must comply with Utah Code Ann. § 73-4-11, which specifically provides that pending a final general adjudication decree . . . "if the right to the use of said waters has been theretofore decreed or adjudicated said waters shall be distributed in accordance with such decree until the same is reversed, modified, vacated or otherwise legally set aside."

Additional Comments

PRWUA commends your office for its efforts in attempting to develop a distribution plan. However, PRWUA is apprehensive that the innovative concepts incorporated therein will prove unworkable as a practical matter. On reflection, it could well be that the better approach would be to concentrate your efforts and resources on expeditiously completing the Proposed Determination of Water Rights, particularly on the Provo River

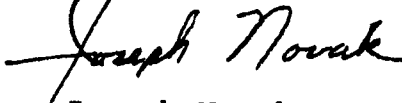
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and Utah Lake, and then develop a water distribution plan to administer those water rights.

PRWUA appreciates the opportunity to comment on the 10/15/91 Revised Draft of the Distribution Proposal and trusts that such comments will receive your careful consideration.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU

A handwritten signature in dark ink, appearing to read "Joseph Novak". The signature is fluid and cursive, with the first name "Joseph" written in a larger, more prominent script than the last name "Novak".

Joseph Novak, General Counsel
Provo River Water Users'
Association

JN:dwb

cc: Provo River Water Users' Association
United States Bureau of Reclamation
Central Utah Water Conservancy District

SUMMARY OF QUANTITIES OF WATER IN ACRE FEET DELIVERED TO NORTH
JORDAN IRRIGATION COMPANY FROM GRAVITY FLOW AND PUMPED WATER FROM UTAH
LAKE TAKEN FROM REPORTS OF UTAH LAKE AND JORDAN RIVER WATER COMMISSIONER

Year	Total Quantity Delivered In Acre Feet	Gravity Flow Water In Acre Feet	Pumped Water In Acre Feet	Utah Lake Above Compro- mise In Months
1936	9,259	2,357	6,902	0
1937	12,011	5,593	6,418	0
1938	12,640	8,554	4,086	0
1939	12,730	8,682	4,048	0
1940	12,129	5,230	6,899	0
1941	9,980	6,406	3,574	0
1942	12,259	9,375	2,884	0
1943	12,501	9,567	2,934	0
1944	12,135	8,452	3,683	0
1945	17,411	15,321	2,090	0
1946	18,556	17,064	1,492	0
1947	14,377	12,665	1,712	0
1948	21,435	16,106	5,329	0
1949	15,188	12,177	3,011	0
1950	19,963	18,910	1,053	0
1951	25,009	23,131	1,878	0
1952	27,313	27,313	0	9.5
1953	20,470	20,184	286	6.5
1954	15,494	14,993	501	0
1955	19,493	15,846	3,647	0
1956	24,084	23,925	159	0
1957	24,424	23,502	922	0
1958	20,426	18,294	2,132	0
1959	18,557	18,557	0	0
1960	25,926	25,732	194	0
1961	16,890	10,234	6,656	0
1962	14,152	12,724	1,428	0
1963	16,242	15,044	1,198	0
1964	21,751	20,983	768	0
1965	20,645	20,346	299	0
1966	30,772	30,772	0	0
1967	34,113	33,110	1,003	0
1968	19,605	19,300	305	0
1969	13,164	13,164	0	0.5
1970	10,803	10,803	0	0
1971	14,294	14,294	0	0
1972	13,121	12,068	1,053	0
1973	11,104	10,745	359	1
1974	7,822	7,414	408	2
1975	11,037	10,599	438	3

Year	Total Quantity Delivered In Acre Feet	Gravity Flow Water In Acre Feet	Pumped Water In Acre Feet	Utah Lake Above Compro- mise In Months
1976	8,034	7,057	977	4.5
1977	6,853	6,853	0	0
1978	4,524	4,423	101	0
1979	4,121	3,881	240	0
1980	2,698	2,698	0	3
1981	2,443	2,443	0	0
1982	3,743	3,743	0	8
1983	4,682	4,682	0	12
1984	2,848	2,848	0	12
1985	16,113	16,113	0	12
1986	9,769	9,769	0	12
1987	8,486	8,486	0	3.5
1988	<u>3,718</u>	<u>3,718</u>	<u>0</u>	<u>0</u>
Totals	767,317	686,250	81,067	
53 yr. avg.	14,478	12,948	1,530	
Recent 20 yr. avg.	7,969	7,790	179	
Recent 10 yr. avg.	5,862	5,838	24	